IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5520 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYESH @ GULIYO S/O BABUBHAI PARMAR THRO - Petitioner(s)
Versus
POLICE COMMISSIONER & 2 - Respondent(s)

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Appearance :
MR MP SHAH for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1, 3,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/05/2007

ORAL JUDGMENT

In the present petition, the petitioner has challenged an order of detention dated 16th December, 2006 passed by the Commissioner of Police, Surat City

in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA”).

2. The detaining authority was of the opinion that the activities of the petitioner are prejudicial to public order and that to prevent such breach, it is necessary to place him under detention. To come to such a conclusion the detaining authority took into consideration one isolated case of breach of prohibition law lodged against the petitioner. The authority also took into consideration statements recorded by the investigating agency while inquiring into this offence.

3. It is not in dispute that this was only the ground on which detention was ordered. The petitioner may be categorized as bootlegger and that his activities may raise question of law and order, the question is whether the same would be prejudicial to the public order.

4. This question was considered by this Court in the order dated 26.4.2007 passed in Special Civil Application No. 5557/07 in which following observations were made:

> “5.1.Reliance in this regard was placed on the decision in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors.**

reported in 2000(1) GLH 393, wherein the Division Bench placing reliance on an earlier Division Bench decision of this Court in the case of Shamjibhai Manjibhai Patel v. Commissioner of Police, City of Ahmedabad and Anr reported in 1992(2) GLR 1360, observed that cases against the detenu have already been registered and the case would fall under the maintenance of "law and order and not public order". The Division Bench, therefore, opined that the subjective satisfaction arrived at by the detaining authority was illegal since the detention could have been passed by the authority for maintenance of public order. On this basis, the Division Bench was pleased to quash the order of detention.

5.2. Reliance was placed on the decision of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr. reported in AIR 1989 SCC 491,** wherein the Apex Court observed that, may be that the detenu is a bootlegger but only on that count he could not be preventively detained unless his activities affect adversely or is likely to affect adversely the maintenance of public order. In the said case, it was alleged that not only the detenu was a bootlegger, he was indulging in use of force and violence, he was involved in illegal sale of liquor and created an atmosphere of fear and terror by beating innocent citizens. The Apex Court observed that apart from some minor incidents of beating by the detenu the witnesses alleged that the detenu was high handed and fierce by nature. It was held that the detention order cannot be upheld as this would not be a case of adversely affecting public order.

5.3. Reliance was also placed on the decision of the learned Single Judge of this Court in the case of **Rajubhai Pratapbhai Panpatil vs. Commissioner of Police, Surat City and Ors. reported in 2006(1) G.L.H. 382**, wherein the learned Judge found that mere registration of prohibition offence is not enough to arrive at the subjective satisfaction that the activities of the detenu are prejudicial to maintenance of public order.

5.4. Reliance was placed on the decision of the Apex Court in the case of **District Collector, Ananthapur and Anr. v. V.Laxmanna reported in (2005) 3 SCCC 663**, wherein the Apex Court observed that mere dealing with arrack or transport or sale thereof by itself would not become an activity prejudicial to the maintenance of pubic order and before ordering detention the authority must be satisfied on material available to it that the arrack dealt with by the detenu is dangerous to public health.

7. Having heard learned advocates for the parties, I find that the contention raised by the learned advocate for the petitioner is required to be upheld. In the present case except for six cases of bootlegging filed against the petitioner there is no further material permitting the detaining authority to come to the conclusion that her activities were prejudicial to the interest of public order. As noted earlier three out of these six cases were filed in the year 2005, whereas the order of detention was passed in the December, 2006. Quite apart from the time gap in taking into consideration the stale cases, I find

> that as observed by the Division Bench of this Court in the case of **Ashokbhai Jivraj @Jivabhai Solanki v. Police Commissioner, Surat & Ors (supra)** mere involvement of a detenu in activities of bootlegging *per se* would not permit the authority to come to a conclusion that her activities were prejudicial to the public order. This view has also been followed subsequently and is also supported by the decision of the Apex Court in the case of **Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and Anr.(supra)**."

5. I have no hesitation in declaring the detention illegal, since I find that the authorities have formed its opinion which cannot be sustained in the eye of law.

6. In the result, the petition is allowed. The order of detention, therefore fails and is hereby quashed. Rule is made absolute. No order as to costs.

7. Since the petition is being allowed and the detention order is quashed, it is further directed that the detenu shall be set at liberty forthwith if there is no other detention or criminal case against him.

[AKIL KURESHI, J.]

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8. After this order has been passed, learned advocate Ms. Shah pointed out that the detention order has already been revoked.

9. In that view of the matter, earlier order is recalled and petition is disposed of as being infructuous.

[AKIL KURESHI, J.]

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